

RECORDATION NO. 11296-<sup>A</sup> Filed 1425

DEC 28 1979 - 2 40 PM

INTERSTATE COMMERCE COMMISSION

CRAVATH, SWAINE & MOORE NO. 11296 - c Filed 1425

ONE CHASE MANHATTAN PLAZA DEC 28 1979 - 2 40 PM

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

TELEX

RCA 233663

WUD 125547

WUI 620976

MAURICE T. MOORE  
BRUCE BROMLEY  
WILLIAM B. MARSHALL  
RALPH L. MCAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA

JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON  
RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHULMAN

INTERSTATE COMMERCE COMMISSION

COUNSEL  
CARLYLE E. MAW  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE O. TYLER

ROSWELL L. GILPATRICK  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON

4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530

33 THROGMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 01-606-1421  
TELEX: 8814901

CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

RECORDATION NO. 11296-<sup>A</sup> Filed 1425

DEC 28 1979 - 2 40 PM

INTERSTATE COMMERCE COMMISSION

No.

Date DEC 28 1979

Fee \$ 100.00

ICC Washington, D. C.

RECORDATION NO. 11296-B Filed 1425

DEC 28 1979 - 2 40 PM

INTERSTATE COMMERCE COMMISSION

Kingsford Company

Lease Financing Dated as of December 1, 1979

11-1/2% Conditional Sale Indebtedness Due 1998

[CS&M Ref: 4876-019]

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Kingsford Company, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of December 1, 1979, between Exchange National Bank of Chicago, and ACF Industries, Incorporated; and

(b) Agreement and Assignment dated as of December 1, 1979, between La Salle National Bank and ACF Industries, Incorporated.

(2) (a) Lease of Railroad Equipment dated as of December 1, 1979, among Kingsford Company, The Clorox Company and Exchange National Bank of Chicago; and

(b) Assignment of Lease and Agreement dated as of December 1, 1979, between Exchange National Bank of Chicago and La Salle National Bank.

11296-c

RECORDATION NO. 11296-B Filed 1425

DEC 28 1979 - 2 40 PM

INTERSTATE COMMERCE COMMISSION

The addresses of the parties to the aforementioned agreements are:

Trustee:

Exchange National Bank of Chicago  
130 South LaSalle Street  
Chicago, Illinois 60690

Builder-Vendor:

ACF Industries, Incorporated  
750 Third Avenue  
New York, N. Y. 10017

Lessee:

Kingsford Company, Commonwealth Building  
Louisville, Kentucky 40201

Guarantor:

The Clorox Company  
1221 Broadway  
Oakland, California 94612

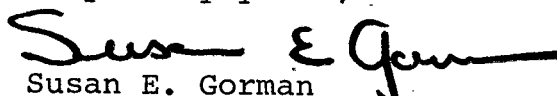
Agent

La Salle National Bank  
135 South LaSalle Street  
Chicago, Illinois 60690

The equipment covered by the aforementioned agreements consists of 95 100-ton, 5,250 cubic foot covered hopper cars bearing the road numbers of the Lessee KGFX101-195 and also bearing the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission".

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,



Susan E. Gorman  
As Agent for Kingsford Company

Agatha Mergenovich, Secretary,  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. .... Filed 1425

INTERSTATE COMMERCE COMMISSION.

## AGREEMENT AND ASSIGNMENT

between

and

LA SALLE NATIONAL BANK,  
                                , as Agent.

AGREEMENT AND ASSIGNMENT dated as of December 1, 1979, between ACF INDUSTRIES, INC., a New Jersey corporation ("Builder"), and LA SALLE NATIONAL BANK, a national banking association, as agent ("Agent"), under a Participation Agreement dated as of the date hereof ("Participation Agreement").

The Builder and EXCHANGE NATIONAL BANK OF CHICAGO, acting as trustee ("Trustee") under a Trust Agreement dated as of the date hereof with REPUBLIC NATIONAL LEASING CORPORATION ("Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the construction, sale and delivery by the Builder and the purchase by the Trustee of the railroad equipment described in Annex B to the CSA ("Equipment").

The Trustee, KINGSFORD COMPANY ("Lessee") and THE CLOROX COMPANY ("Guarantor") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease of the Equipment to the Lessee, and the Trustee and the Agent have entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") providing for the assignment of the Lease to the Agent.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. The Builder hereby transfers and assigns to the Agent, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as delivered to and accepted by the Trustee, subject to payment by the Agent to the Builder of the amount required to be paid pursuant to Section 4 hereof and subject to the payment to the Builder by the Trustee of the amounts required to be paid pursuant to Section 4.3(a) of the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment, the right to receive the payments specified in Section 4.3(a) thereof, the right to reimbursement for taxes paid or incurred by the Builder, and, except as aforesaid, in and to any and

all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon and in and to any other sums becoming due from the Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subsection (b) of this section, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Trustee to make any of the payments provided for in the CSA or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Agent to or transfer or in any way affect or modify the obligations of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements contained or referred to in Article 14 of the CSA or relieve the Trustee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that all obligations of the Builder with respect to the Equipment shall be and remain enforceable by the Trustee and its successors and assigns against and only against the Builder. The Builder hereby authorizes and empowers the Agent in the Agent's own name or in the name of the Agent's nominee or in the name of and as attorney for the Builder, hereby irrevocably constituted, to demand, sue for, collect and receive any and all sums to which the Agent is or may become entitled under this Assignment and to enforce compliance by the Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Agent.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Trustee in accordance with the provisions of the CSA and that, notwithstanding this Assignment, it will fully comply with all the covenants and conditions of the CSA set forth to be complied with by the Builder. The Builder further agrees that it will warrant to the Agent and the Trustee that at the time of delivery of each unit of Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only

the rights created under the CSA, this Assignment and the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA. The Builder will not deliver any of the Equipment to the Trustee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

SECTION 3. The Builder agrees with the Agent that in any suit, proceeding or action brought by the Agent under the CSA for any installment of indebtedness or interest thereon in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Agent from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Trustee, the Lessee or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless is conditional upon (a) the Agent's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Trustee, the Lessee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent's prompt notification thereof to the Builder and the Agent's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees

to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to the Builder of any claim actually known to the Agent which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Trustee or the Lessee or the Guarantor with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Agent, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. Subject to the provisions of Paragraph 9 of the Participation Agreement, the Agent, on the Closing Date (as defined in the CSA), shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment then being settled for which, under the terms of Section 4.3(b) of the CSA, is payable in installments, provided that there shall have been delivered to the Agent on or prior to the Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Agent transferring to the Agent the security interest of the Builder in such units, warranting to the Agent and to the Trustee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights created under the CSA, this Assignment and the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance on behalf of the Trustee and the Lessee with respect to

such units as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an Invoice (as defined in the CSA) for such units accompanied by or having endorsed thereon a certification by the Trustee and the Lessee with respect to such units, as to their approval thereof if the purchase price is other than the base price or prices set forth in Annex B to the CSA;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Agent and the Trustee, to the effect that the bill or bills of sale described in subsection (a) above have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Agent the security interest of the Builder in such units, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA, this Assignment and the Lease) arising from, through or under the Builder;

(e) a receipt from the Builder for any payment (other than the payment being made by the Agent pursuant to the first paragraph of this Section 4) required to be made on the Closing Date to the Builder with respect to such units, unless the payment is made by the Agent with funds furnished to it for that purpose by the Trustee; and

(f) such other certificates opining as the Agent may reasonably request.

The obligation of the Agent hereunder to make payment for any of the Equipment is hereby expressly conditioned upon the Agent having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Trustee of the amount required to be paid by it pursuant to Section 4.3(a) of the CSA. In the event that the Agent shall not make any such payment, the Agent shall reassign to the Builder, without recourse to the Agent (unless the Agent shall have failed to make such payment notwithstanding its receipt of the documents specified in this Section in satisfactory form and receipt of the necessary funds) all right, title and interest of the Agent in and to the units of Equipment with respect to which payment has not been made by the Agent.

SECTION 5. The Agent may assign any or all of its



rights under the CSA, including the right to receive any payments due or to become due to it from the Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Agent, the Trustee and their successors and assigns that the CSA and this Assignment were duly authorized by it and duly and lawfully executed and delivered by it for a valid consideration; that, assuming due authorization, execution and delivery by the Trustee and the Agent, respectively, each is a legal, valid and binding agreement, enforceable against the Builder in accordance with its terms and that each is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be; and

(c) agrees that, subsequent to payment of the sums due it hereunder and under the CSA, upon request of the Agent or its successors and assigns it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. This Assignment shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment

shall be filed or in which any unit of Equipment shall be located and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

ACF INDUSTRIES, INC.,

by

*[Signature]*  
TREASURER

[Corporate Seal]

Attest:

*[Signature]*

SECRETARY

LA SALLE NATIONAL BANK,  
as Agent,

by

\_\_\_\_\_

[Seal]

Attest:

\_\_\_\_\_

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

EXCHANGE NATIONAL BANK OF CHICAGO hereby acknowledges receipt of due notice of the assignment by the foregoing Agreement and Assignment as of December 1, 1979.

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee,

by  
\_\_\_\_\_

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK,)

On this 26<sup>th</sup> day of December 1979, before me personally appeared H. A. Bore, to me personally known, who, being by me duly sworn, says that he is President of ACF INDUSTRIES, INC., a New Jersey corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Opina E. Nish  
Notary Public

[Notarial Seal]

OLIVA E. WALSH  
Notary Public, State of New York  
No. 41-9520900 Qual. in Queens Co.  
Certificate Filed in New York County  
Commission Expires March 30, 1980

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1979, before me  
personally appeared            , to me personally  
known, who, being by me duly sworn, says that he is

of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

## AGREEMENT AND ASSIGNMENT

Dated as of December 1, 1979

between

ACF INDUSTRIES, INC.

and

LA SALLE NATIONAL BANK,  
                                , as Agent.

AGREEMENT AND ASSIGNMENT dated as of December 1, 1979, between ACF INDUSTRIES, INC., a New Jersey corporation ("Builder"), and LA SALLE NATIONAL BANK, a national banking association, as agent ("Agent"), under a Participation Agreement dated as of the date hereof ("Participation Agreement").

The Builder and EXCHANGE NATIONAL BANK OF CHICAGO, acting as trustee ("Trustee") under a Trust Agreement dated as of the date hereof with REPUBLIC NATIONAL LEASING CORPORATION ("Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the construction, sale and delivery by the Builder and the purchase by the Trustee of the railroad equipment described in Annex B to the CSA ("Equipment").

The Trustee, KINGSFORD COMPANY ("Lessee") and THE CLOROX COMPANY ("Guarantor") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease of the Equipment to the Lessee, and the Trustee and the Agent have entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") providing for the assignment of the Lease to the Agent.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. The Builder hereby transfers and assigns to the Agent, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as delivered to and accepted by the Trustee, subject to payment by the Agent to the Builder of the amount required to be paid pursuant to Section 4 hereof and subject to the payment to the Builder by the Trustee of the amounts required to be paid pursuant to Section 4.3(a) of the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment, the right to receive the payments specified in Section 4.3(a) thereof, the right to reimbursement for taxes paid or incurred by the Builder, and, except as aforesaid, in and to any and

all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon and in and to any other sums becoming due from the Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subsection (b) of this section, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Trustee to make any of the payments provided for in the CSA or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Agent to or transfer or in any way affect or modify the obligations of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements contained or referred to in Article 14 of the CSA or relieve the Trustee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that all obligations of the Builder with respect to the Equipment shall be and remain enforceable by the Trustee and its successors and assigns against and only against the Builder. The Builder hereby authorizes and empowers the Agent in the Agent's own name or in the name of the Agent's nominee or in the name of and as attorney for the Builder, hereby irrevocably constituted, to demand, sue for, collect and receive any and all sums to which the Agent is or may become entitled under this Assignment and to enforce compliance by the Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Agent.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Trustee in accordance with the provisions of the CSA and that, notwithstanding this Assignment, it will fully comply with all the covenants and conditions of the CSA set forth to be complied with by the Builder. The Builder further agrees that it will warrant to the Agent and the Trustee that at the time of delivery of each unit of Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only

the rights created under the CSA, this Assignment and the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA. The Builder will not deliver any of the Equipment to the Trustee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

SECTION 3. The Builder agrees with the Agent that in any suit, proceeding or action brought by the Agent under the CSA for any installment of indebtedness or interest thereon in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Agent from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Trustee, the Lessee or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless is conditional upon (a) the Agent's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Trustee, the Lessee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent's prompt notification thereof to the Builder and the Agent's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees



to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to the Builder of any claim actually known to the Agent which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Trustee or the Lessee or the Guarantor with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Agent, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. Subject to the provisions of Paragraph 9 of the Participation Agreement, the Agent, on the Closing Date (as defined in the CSA), shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment then being settled for which, under the terms of Section 4.3(b) of the CSA, is payable in installments, provided that there shall have been delivered to the Agent on or prior to the Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Agent transferring to the Agent the security interest of the Builder in such units, warranting to the Agent and to the Trustee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights created under the CSA, this Assignment and the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance on behalf of the Trustee and the Lessee with respect to

such units as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an Invoice (as defined in the CSA) for such units accompanied by or having endorsed thereon a certification by the Trustee and the Lessee with respect to such units, as to their approval thereof if the purchase price is other than the base price or prices set forth in Annex B to the CSA;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Agent and the Trustee, to the effect that the bill or bills of sale described in subsection (a) above have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Agent the security interest of the Builder in such units, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA, this Assignment and the Lease) arising from, through or under the Builder;

(e) a receipt from the Builder for any payment (other than the payment being made by the Agent pursuant to the first paragraph of this Section 4) required to be made on the Closing Date to the Builder with respect to such units, unless the payment is made by the Agent with funds furnished to it for that purpose by the Trustee; and

(f) such other certificates opining as the Agent may reasonably request.

The obligation of the Agent hereunder to make payment for any of the Equipment is hereby expressly conditioned upon the Agent having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Trustee of the amount required to be paid by it pursuant to Section 4.3(a) of the CSA. In the event that the Agent shall not make any such payment, the Agent shall reassign to the Builder, without recourse to the Agent (unless the Agent shall have failed to make such payment notwithstanding its receipt of the documents specified in this Section in satisfactory form and receipt of the necessary funds) all right, title and interest of the Agent in and to the units of Equipment with respect to which payment has not been made by the Agent.

SECTION 5. The Agent may assign any or all of its

rights under the CSA, including the right to receive any payments due or to become due to it from the Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Agent, the Trustee and their successors and assigns that the CSA and this Assignment were duly authorized by it and duly and lawfully executed and delivered by it for a valid consideration; that, assuming due authorization, execution and delivery by the Trustee and the Agent, respectively, each is a legal, valid and binding agreement, enforceable against the Builder in accordance with its terms and that each is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be; and

(c) agrees that, subsequent to payment of the sums due it hereunder and under the CSA, upon request of the Agent or its successors and assigns it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. This Assignment shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment

shall be filed or in which any unit of Equipment shall be located and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

ACF INDUSTRIES, INC.,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

LA SALLE NATIONAL BANK,  
as Agent,

by  \_\_\_\_\_

VICE PRESIDENT

[Seal]

Attest:

 \_\_\_\_\_  
ASSISTANT SECRETARY

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

EXCHANGE NATIONAL BANK OF CHICAGO hereby acknowledges receipt of due notice of the assignment by the foregoing Agreement and Assignment as of December 1, 1979.

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee,

by

---

STATE OF NEW YORK, )  
 ) ss.:  
 COUNTY OF NEW YORK, )

On this            day of            1979, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is            of ACF INDUSTRIES, INC., a New Jersey corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

---

Notary Public

[Notarial Seal]

STATE OF ILLINOIS, )  
 ) ss.:  
 COUNTY OF COOK, )

On this *24th* day of *December* 1979, before me personally appeared R. K. WEBER, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT

of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

*Patricia M. Kennedy*  
 Notary Public

[Notarial Seal]

My Commission Expires August 24, 1982

## AGREEMENT AND ASSIGNMENT

Dated as of December 1, 1979

between

ACF INDUSTRIES, INC.

and

LA SALLE NATIONAL BANK,  
                                , as Agent.

AGREEMENT AND ASSIGNMENT dated as of December 1, 1979, between ACF INDUSTRIES, INC., a New Jersey corporation ("Builder"), and LA SALLE NATIONAL BANK, a national banking association, as agent ("Agent"), under a Participation Agreement dated as of the date hereof ("Participation Agreement").

The Builder and EXCHANGE NATIONAL BANK OF CHICAGO, acting as trustee ("Trustee") under a Trust Agreement dated as of the date hereof with REPUBLIC NATIONAL LEASING CORPORATION ("Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the construction, sale and delivery by the Builder and the purchase by the Trustee of the railroad equipment described in Annex B to the CSA ("Equipment").

The Trustee, KINGSFORD COMPANY ("Lessee") and THE CLOROX COMPANY ("Guarantor") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease of the Equipment to the Lessee, and the Trustee and the Agent have entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") providing for the assignment of the Lease to the Agent.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. The Builder hereby transfers and assigns to the Agent, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as delivered to and accepted by the Trustee, subject to payment by the Agent to the Builder of the amount required to be paid pursuant to Section 4 hereof and subject to the payment to the Builder by the Trustee of the amounts required to be paid pursuant to Section 4.3(a) of the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment, the right to receive the payments specified in Section 4.3(a) thereof, the right to reimbursement for taxes paid or incurred by the Builder, and, except as aforesaid, in and to any and



all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon and in and to any other sums becoming due from the Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subsection (b) of this section, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Trustee to make any of the payments provided for in the CSA or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Agent to or transfer or in any way affect or modify the obligations of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements contained or referred to in Article 14 of the CSA or relieve the Trustee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that all obligations of the Builder with respect to the Equipment shall be and remain enforceable by the Trustee and its successors and assigns against and only against the Builder. The Builder hereby authorizes and empowers the Agent in the Agent's own name or in the name of the Agent's nominee or in the name of and as attorney for the Builder, hereby irrevocably constituted, to demand, sue for, collect and receive any and all sums to which the Agent is or may become entitled under this Assignment and to enforce compliance by the Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Agent.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Trustee in accordance with the provisions of the CSA and that, notwithstanding this Assignment, it will fully comply with all the covenants and conditions of the CSA set forth to be complied with by the Builder. The Builder further agrees that it will warrant to the Agent and the Trustee that at the time of delivery of each unit of Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only

the rights created under the CSA, this Assignment and the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA. The Builder will not deliver any of the Equipment to the Trustee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303.

SECTION 3. The Builder agrees with the Agent that in any suit, proceeding or action brought by the Agent under the CSA for any installment of indebtedness or interest thereon in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Agent from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Trustee, the Lessee or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless is conditional upon (a) the Agent's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Trustee, the Lessee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent's prompt notification thereof to the Builder and the Agent's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees

to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to the Builder of any claim actually known to the Agent which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Trustee or the Lessee or the Guarantor with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Agent, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. Subject to the provisions of Paragraph 9 of the Participation Agreement, the Agent, on the Closing Date (as defined in the CSA), shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment then being settled for which, under the terms of Section 4.3(b) of the CSA, is payable in installments, provided that there shall have been delivered to the Agent on or prior to the Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Agent transferring to the Agent the security interest of the Builder in such units, warranting to the Agent and to the Trustee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights created under the CSA, this Assignment and the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance on behalf of the Trustee and the Lessee with respect to

such units as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an Invoice (as defined in the CSA) for such units accompanied by or having endorsed thereon a certification by the Trustee and the Lessee with respect to such units, as to their approval thereof if the purchase price is other than the base price or prices set forth in Annex B to the CSA;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Agent and the Trustee, to the effect that the bill or bills of sale described in subsection (a) above have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Agent the security interest of the Builder in such units, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA, this Assignment and the Lease) arising from, through or under the Builder;

(e) a receipt from the Builder for any payment (other than the payment being made by the Agent pursuant to the first paragraph of this Section 4) required to be made on the Closing Date to the Builder with respect to such units, unless the payment is made by the Agent with funds furnished to it for that purpose by the Trustee; and

(f) such other certificates opining as the Agent may reasonably request.

The obligation of the Agent hereunder to make payment for any of the Equipment is hereby expressly conditioned upon the Agent having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Trustee of the amount required to be paid by it pursuant to Section 4.3(a) of the CSA. In the event that the Agent shall not make any such payment, the Agent shall reassign to the Builder, without recourse to the Agent (unless the Agent shall have failed to make such payment notwithstanding its receipt of the documents specified in this Section in satisfactory form and receipt of the necessary funds) all right, title and interest of the Agent in and to the units of Equipment with respect to which payment has not been made by the Agent.

SECTION 5. The Agent may assign any or all of its

rights under the CSA, including the right to receive any payments due or to become due to it from the Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Agent, the Trustee and their successors and assigns that the CSA and this Assignment were duly authorized by it and duly and lawfully executed and delivered by it for a valid consideration; that, assuming due authorization, execution and delivery by the Trustee and the Agent, respectively, each is a legal, valid and binding agreement, enforceable against the Builder in accordance with its terms and that each is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be; and

(c) agrees that, subsequent to payment of the sums due it hereunder and under the CSA, upon request of the Agent or its successors and assigns it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. This Assignment shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment

shall be filed or in which any unit of Equipment shall be located and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

ACF INDUSTRIES, INC.,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

LA SALLE NATIONAL BANK,  
as Agent,

by \_\_\_\_\_

[Seal]

Attest:

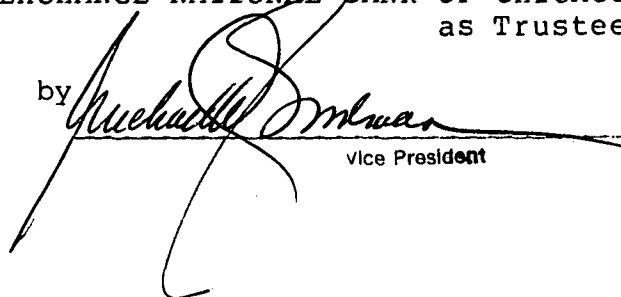
\_\_\_\_\_

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

EXCHANGE NATIONAL BANK OF CHICAGO hereby acknowledges receipt of due notice of the assignment by the foregoing Agreement and Assignment as of December 1, 1979.

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee, ~~and not individually~~

by

  
Vice President

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK,)

On this                      day of                      1979, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is                      of ACF INDUSTRIES, INC., a New Jersey corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,) ss.:  
COUNTY OF COOK, )

On this            day of            1979, before me  
personally appeared            , to me personally  
known, who, being by me duly sworn, says that he is

of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]